

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 624 of 1997

in

CIVIL APPLICATION No. 3601 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRINCIPAL, L.D ENGG. COLLEGE & ORs.

Versus

B C PARMAR & Ors.

Appearance:

MR. Maulin Rawal, AGP for Petitioners

MR. DT Soni advocate for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 15/07/97

ORAL JUDGMENT {Per : Thakkar, J.}

Admitted. Mr. D.T. Soni appears for the respondents and waives service of notice of admission on behalf of respondent No. 1.

This appeal is directed against an interim order passed in Civil Application No. 3601 of 1997 in Special Civil Application No. 10227 of 1995. The appellants are the original respondents. Special Civil Application No. 10227 of 1995 was filed by the petitioners for quashing and setting aside the action of oral termination taken against them by the Principal, L.D. Engineering College, Ahmedabad - Respondent no. 1 herein, as according to the petitioners, the said action was illegal, arbitrary and void ab initio. A prayer was made to permanently restrain the respondents from interfering the petitioners from discharging duties as Class-IV servants in the Department. The petition is pending and "Rule" is issued.

In the meanwhile, 20 posts of Class-IV were to be filled-in and names of suitable incumbents from Employment Exchange were called for by the Principal. That necessitated filing of Civil Application No. 1947 of 1997. In the Civil Application, a prayer was made to direct the Opponent No. 3, Director of Employment Exchange, Ahmedabad to send names of applicants for the post of Class-IV, and to opponent No. 2 to consider their names of the petitioners by calling them for interview. The learned Single Judge after hearing the parties, by an order dated April 4, 1997 issued certain directions. Against that order, present Letters Patent Appeal is filed.

We have heard Mr. Rawal, learned AGP for the appellant and Mr. Soni, learned advocate for the respondents. Mr. Rawal raised three contentions. Firstly, he submitted that the learned Single Judge has passed an order and issued certain directions which could not have been done at interim stage when the matter is pending. Secondly, the learned Judge has passed an order regarding relaxation of age of petitioners which is final in nature, and thirdly, the learned Single Judge directed the opponents to appoint petitioners if they are found suitable for the posts which could not have been done.

Mr. Soni, on the other hand, submitted that no order is passed by the learned Single Judge directing the present appellants to give appointments. The cases were ordered to be considered and such direction could have been issued. Relying upon a decision of Hon'ble Supreme

Court in Dr. Surendrasingh & Anr. vs. State of Jammu & Kashmir & Ors., AIR 1996 SC 2775. Mr. Soni submitted that if the cases of the petitioners will not be considered, irreparable loss and injury would be caused to them, particularly when they are in service and in the said Department for many years.

In the facts and circumstances of the case, it may not be proper to express any opinion on merits one way of the other at this stage. When the direction is issued by the learned Single Judge to consider cases of the petitioners on merits, let their cases be considered by the Department. About relaxation of age, however, it is clarified that it will be subject to the final out-come of the petition and without prejudice to the rights and contentions of the State Government. It is contended by Mr. Rawal that the State Government has no power to such relax, which is disputed by Mr. Soni. We do not say anything on that point. We also do not say as to whether the ratio laid down by the Apex Court in Dr. Surendrasingh {supra} applies when the main matter is pending. We may, however, clarify that even if cases of the petitioners are considered and they are found fit, no regular appointments will be made without prior permission of the learned Single Judge.

Appeal is accordingly allowed to the aforesaid extent. The respondent may move the learned Single Judge for early disposal of the petition. No order as to costs.

Prakash*